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HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.A.No.538/2001

Single Bench: Hon'ble Shri Sunil Kumar Sinha, J

Appellant

Punnam Singh @ Bhaku Lal
S/o Baisakhu Aged 21 yrs.
Caste Satnami, R/o Village-
Kusmul, Thana Damra, Distt-
Janjgir-Champa (CG)

Versus

Respondent

State of Chhattisgarh
Through Station House Officer,
Police Station, Damra, Distt.
Janjgir-Champa (CG)

Criminal appeal under Section 374 (2) of the Code of the Criminal Procedure

Present :

Shri V.C. Ottalwar, learned counsel for the appellant.
Shri Ashish Shukla, learned Government Advocate for the
State/respondent.

ORAL ORDER

14.05.2007

SUNIL KUMAR SINHA, J.

(1) This appeal is directed against the judgment of conviction and order of sentence dated 27.4.2001 passed in Sessions Trial No.483/2000 by Shri Anurag Shrivastava, Additional Sessions Judge, Sakti, District Bilaspur (CG) whereby the said Court, after holding the appellant guilty of offence punishable under Section 376 (1) of IPC, sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo rigorous imprisonment for 3 months.

(2) The case of the prosecution is that PW-1, Aghan Bai, a girl aged about 15 years, was subjected to sexual intercourse by this appellant

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in the intervening night of 24/25-10-2000. The allegations are that at about 3.00 a.m. in the said intervening night, when the prosecutrix Ku. Aghan Bai (PW-1) came out from her house to answer the call of nature, the appellant came over there, caught hold of her and took her to his house which is situated near the house of the prosecutrix. There, he undressed her and got her laid down on the cot; thereafter he undressed himself and committed sexual intercourse against the prosecutrix. It is stated that he committed sexual intercourse for three times and the prosecutrix remained in his house up to 6 o' clock and then she returned back to her house. When her mother and father asked her as to where she had gone?, she did not disclose them the story and ultimately, she along with her maternal grandmother went to a different village where she disclosed the story to the maternal grandmother who disclosed the story to the parents and after convening a village Panchayat, a report was lodged on 31.10.2000 vide Ex.P-2. After the report was lodged, the girl was sent for medical examination where the lady Doctor Dr. Smt. R.L. Rajnala (PW-8) examined her and submitted her report vide Ex.P-4. During the course of the investigation, the Investigating Officer has seized two mark sheets of the prosecutrix i.e. mark sheet of *Prathamik Praman Patra Pariksha, 1979* and *Poorva Madhyamik Pariksha, 2000* which have been marked as Ex.P-6 and Ex.P-7 respectively. According to these mark sheets, the date of birth of the prosecutrix was 1.1.1986, according to which she was aged about 14 years and 10 months on the date of incident. After completion of usual investigation, the charge sheet was filed and the matter was committed to the Court of



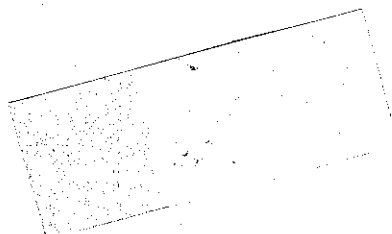
Sessions, Bilaspur from where it was received on transfer by the Additional Sessions Judge, Sakti who in turn conducted the trial and passed the interim judgment. It is against this judgment, the appellant has preferred this appeal.

(3) Learned counsel for the appellant raises only one point. His submission is that vide para 15 of the judgment, the trial Court has recorded a finding that the prosecutrix has been a consenting party with the appellant. But, the conviction has been awarded because she was proved to be below 16 years of age on the date of incident. His submission is that the finding in relation to age is not in accordance with law and the same be set aside and consequently the appellant be acquitted of the charges framed under Section 376 of IPC. He relies on the decision rendered by Apex Court in the matter of Ram Murti Vs. State of Haryana, AIR 1970 Supreme Court 1020.

(4) On the other hand, learned counsel for the State opposes these arguments. His submission is that the Sessions Court has rightly recorded a finding that the prosecutrix was below 16 years of age and the conviction and sentence awarded to the appellant does not deserve to be interfered by this Court.

(5) I have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

(6) This is a case in which the mother and father of the prosecutrix both have been examined as PW-2 and PW-4. PW-2 Janki Bai (mother) has stated in her examination-in-chief that her daughter was



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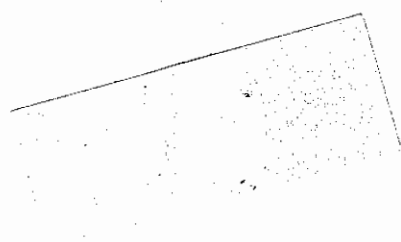
aged about 15 years and thereafter, nothing has been said in this regard. So far as the father Chandan (PW-4) is concerned, he has neither deposed a single word regarding the age of the prosecutrix, nor about her date of birth. The trial Court has recorded the finding regarding the age mainly on the basis of the contents of Ex.P-6 and P-7 which are the two certificates, produced by the father of the prosecutrix during the course of investigation, in which the date of birth of the prosecutrix is mentioned as 1.1.1986. Admittedly, these are the unproved mark sheets of *Prathamik Praman Patra Pariksha, 1979* (Class-V) and *Poorva Madhyamik Pariksha, 2000* (Class-VIII) and they are unproved documents i.e. to say that the contents of these documents have not been proved by any authority either by proving its execution/preparation by them or by comparing the contents with the copies of these documents kept in the office of such authority. Whether such unproved mark sheets could have been held to be the conclusive proof of date of birth is the question for consideration.

(7) In *Ram Murthi's* case (Supra) the Apex Court held that in a case under Section 366 and 376, age of prosecutrix is always of importance, particularly so where according to medical evidence, she was found to have been used to sexual intercourse and there was old rupture of hymen. The Apex Court said that where the accused was acquitted of offence punishable under Section 376, the Court should examine the question of age more closely. It further held vide para 7 that unproved and unexhibited school certificate cannot be relied on. This is one of the aspects of the matter which gives finality so far as the question of

relying on the unproved school certificates (mark sheets) are concerned.

(8) Yet another question is also of importance i.e. regarding such entry contained in the mark sheets or certificates. In A.I.R. 1965, Supreme Court 282- Brij Mohan Singh vs. Priya Brat Narain Sinha and others, it has been held by the Apex Court that in actual life, it often happens that persons give false age of the boy at the time of his admission to a school so that later in life he would have an advantage when seeking public service for which a minimum age for eligibility is often prescribed. The Apex Court further said that the court of fact cannot ignore this fact while assessing the value of the entry and it would be improper for the court to base any conclusion on the basis of the entry, when it is alleged that the entry was made upon false information supplied with the above motive.

(9) While dealing with the question of age in a matter under Section 366 IPC, the High Court of Punjab and Haryana observed in AIR 1970 P & H 450 - Raunki Saroop vs. State that it is a matter of common knowledge that the ages given at the time of admission of girls and boys in schools are far from being precise. More often, than not, attempt is made by the parents and guardians of their wards, who get admission in the schools, to under state their ages and to give a later date of birth than the real one. Thus, the ages given in the school certificates are not dependable for determination of the precise date of birth of a student, to whom the entry as to the date of birth in the school records pertains.



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(10) In view of the above facts and circumstances, it does not appear to me that, in light of the evidence of the father and the mother and further in light of contents of two unproved school certificates i.e. Ex.P-6 and P-7, it should be held that the date of birth of prosecutrix was 1.1.1986 and she was aged less than 16 years on the date of incident so as to base the conviction on such evidence. In appreciation of the entire evidence led by the prosecution on this point, I hold that the prosecution could not establish, beyond reasonable doubt, that the girl was below 16 years of age on the date of incident, and I hold it accordingly. Consequently, I also hold that since the girl was not proved to be a minor, her conduct of remaining in the house of the appellant for whole of the night and participating in commission of sexual intercourse for three times and thereafter not disclosing the matter to the father or mother after reaching to the house in the morning, even after their enquiry, would show that she was a consenting party with the appellant, as has also been held by the Sessions Court vide para 15.

(11) In the facts and circumstances of this case, the conviction and sentence awarded to the appellant under Section 376 (1) of IPC cannot be sustained. The same are hereby set aside. The appeal is allowed. The appellant is acquitted of the charges framed against him. If the appellant is in jail, he be set at liberty if not required in any other case.

Sd/-
Sunil Kumar Sinha
Judge